BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

MARY L. BOXBERGER)
Claimant VS.)) Docket No. 202 150
GLENDALE MANOR, INC. Respondent) Docket No. 202,150
AND	
HARTFORD ACCIDENT & INDEMNITY Insurance Carrier	

ORDER

Claimant requested review of the preliminary hearing Order entered by Administrative Law Judge Floyd V. Palmer dated April 15, 1996.

ISSUES

The Administrative Law Judge denied claimant's request for workers compensation benefits for an alleged accident occurring on or about August 6, 1994. The Administrative Law Judge found that claimant did not prove that she sustained personal injury by accident arising out of and in the course of her employment with respondent and failed to prove she provided respondent timely notice of accident. In addition, the Administrative Law Judge generally found that "claimant has not carried her burden of proof." Claimant asks the Appeals Board to review those findings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds:

The preliminary hearing Order entered by the Administrative Law Judge should be affirmed.

Claimant contends she injured her back on or about August 6, 1994 while working for the respondent when she allegedly helped lift a small window air conditioner. Claimant contends she notified her supervisor of the incident later the same day.

The parties presented conflicting evidence concerning the issues of whether claimant injured herself at work and whether she provided notice. Neither party presented a medical report or medical opinion from a physician regarding the relationship of claimant's present symptoms to the alleged incident, although it has been over one year after the incident occurred.

The Administrative Law Judge did not believe claimant's version of the facts. Because the Administrative Law Judge was in the enviable and unique position to observe claimant testify and, therefore, assess her demeanor, in this instance the Appeals Board gives some deference to the Judge's opinion of claimant's credibility. The Appeals Board agrees with the analysis and conclusion of the Administrative Law Judge that "claimant has not carried her burden of proof."

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Floyd V. Palmer dated April 15, 1996, should be, and hereby is, affirmed.

Dated this ____ day of June 1996.

IT IS SO ORDERED.

BOARD MEMBER

c: Roger D. Fincher, Topeka, KS Ronald J. Laskowski, Topeka, KS Floyd V. Palmer, Administrative Law Judge Philip S. Harness, Director